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6. Trial (§ 260 (1)*)—Requested Instructions Covered by Others Properly Refused.—Requested instructions may properly be refused where their substance has been covered by other instructions given.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

7. Wills (§ 296*)—Evidence Admissible as to Testator's Intent to Revoke by Execution of Subsequent Will.—Where a testator made a will, and subsequently executed another instrument in form a complete will, claimed to constitute a revocation of the first, evidence by the scrivener of the first will that the testator inquired of him whether such will would stand as against a contest held properly admitted on the issue of testator's intent to revoke the first will by such second will.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 316.]

8. Wills (§ 296*)—Evidence as to Testator's Intent in Executing a Purported Second Will Held Admissible.—On an issue as to whether testator by executing an instrument in form a will thereby intended to revoke a former will, evidence that the first will still remained in possession of the scrivener, and that the second will was subsequently destroyed by the testator, held admissible to show intent.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 316.]

Error to Circuit Court of City of Norfolk.

Proceedings by Eva Catherine Clark against Randolph B. Hugo and others for the probate of the last will and testament of Cyrus Warden, deceased. A judgment against the will was rendered, and proponent brings error. Reversed and rendered.

Thos. H. Willcox, of Norfolk, for plaintiff in error.

W. S. Morris, Jr., Harry E. McCoy, and Jas. G. Martin, all of Norfolk, for defendants in error.

ELTERICH et al. v. LEIGHT REAL ESTATE CO., Inc.

June 16, 1921.

[107 S. E. 735.]

1. Covenants (§ 51 (3)*)—Two Family House Held "an Apartment House" within Restrictive Covenant.—A house built for two families held an "apartment house" within building restriction covenant against the construction of an "apartment house" on the land, in view of the other provisions of deed making it appear that the restriction was in furtherance of an undertaking to develop the locality in which the land was situated as a high-class residential suburb. and in view of the evidence as to the meaning of the term in the minds of the parties at the time of the execution of the deed.

[Ed. Note.—For other definitions, see Words and Phrases, First

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and Second Series, Apartment House. For other cases, see 2 Va.-W. Va. Enc. Dig. 654.]

2. Evidence (§ 455*)—Parol Evidence as to Existing Circumstances and Conditions Admissible, Where Word or Phrase in Covenant Has More than One Meaning.—When a word or phrase used in a covenant has more than one meaning, judicial notice of existing circumstances and conditions is indispensable to a correct exposition of the law upon the subject, and to that end parol evidence is admissible.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 713.]

3. Covenants (§ 51 (1*))—Object Considered in Construing Restrictive Covenant.—In construing a building restriction covenant, the object which the covenant was designed to accomplish must be considered.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 858.]

4. Covenants (§ 21*)—Language Read in Ordinary and Not Technical Sense.—The language of a covenant must be read in an ordinary or popular, and not in a legal or technical, sense.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 862.]

5. Covenants (§ 21*)—Given Obvious Meaning in Accordance with Intention of Parties.—The language of a restrictive covenant must be given its obvious meaning, and construed in accordance with the intention of the parties, assuming that the restriction was put into the deed, not simply for the benefit of the grantor, but for the benefit of every owner of property and of every resident on the street.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 861.]

6. Covenants (§ 103 (3*))—Breach of Restrictive Covenant Held Not Waived.—Grantor did not waive breach of building restriction against construction of two family residence by agreeing to construction of building according to proposed plans upon the condition that grantee agreed in writing on the plans that the rooms on the second floor, designated as "pantry," "kitchen," and "dining room," should be used only as bedrooms, where grantee refused to make such agreement, since in view of such refusal the waiver did not take effect.

Appeal from Circuit Court, Norfolk County.

Suit by the Leight Real Estate Company, Incorporated, against Kathryn E. Elterich and another. Decree for plaintiff, and defendants appeal. Affirmed.

Thos. W. Shelton and Alfred Anderson, both of Norfolk, for appellants.

H. C. Sherritt, Martin & Martin, and *Thos. H. Willcox*, all of Norfolk, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.